

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

VALERIE GRAHAM,

c/o The Veritas Law Firm
1225 19th Street, NW, Ste 320
Washington, DC 20036

Plaintiff Petitioner,

v.

Case No.

BOARD OF ELECTIONS

Serve: Mayor of the District of Columbia
Office of the Mayor
John A. Wilson Building
1350 Pennsylvania Ave NW
Washington, DC 20004, and

Attorney General for the District of Columbia
Attorney General's Office
441 4th Street NW
Washington, DC 20001

Defendant.

COMPLAINT
(PETITION FOR WRIT OF MANDAMUS)

COMES NOW, Valerie Graham, individually and through counsel, Andrew Kline, Christopher LaFon and The Veritas Law Firm, and sets forth the following complaint and petition for a writ of mandamus to address Referendum 008 (the “Referendum”), including the process by which it was created, as follows:

1. Valerie Graham (also, Plaintiff or Petitioner) is a resident of the District of Columbia and has been during all times relevant to this Complaint.
2. Valerie Graham is registered to vote in the District of Columbia and has been during all times relevant to this Complaint.
3. Valerie Graham is over 18 years of age, is a citizen of the United States, currently maintains and has maintained a residence in the District for at least 30 days preceding the next

election and does not claim voting residence or right to vote in any state or territory, is not incarcerated for a crime that is a felony in the District, and has not been found by a court of law to be legally incompetent to vote.

4. On June 19, 2018, voters in the District of Columbia had voted in favor of the implementation of Initiative 77, which had been granted voting ballot access.

5. On or around October 16, 2018, D.C. Council gave approval to legislation repealing Initiative 77, the second of two votes required by the Council to repeal the voter initiative.

6. Woong Chang filed a Notice of a Referendum Measure with the Board of Elections (“BOE”) on or around October 31, 2018.

7. The Referendum Measure concerned the law repealing Initiative 77, Minimum Wage Amendment Act of 2018.

8. This Court has jurisdiction in this matter pursuant to D.C. Code § 1-1001.16(e)(1)(B), D.C. Code Mun. Regs. tit. 3 § 1001.4 and the District of Columbia Administrative Procedure Act.

9. The Notice of Referendum filed by Mr. Chang with the BOE included the demand that BOE order a referendum under Section 1-1001.16(a) of the Code be held on Section 2 of D.C. Law 22-489, the “Tipped Wage Workers Fairness Amendment of 2018.”

10. The Notice of Referendum filed by Mr. Chang with the BOE also included a short title, summary statement and the text of the referendum and section of D.C. Law 22-489. *See* Exhibit A.

11. The Notice of Referendum filed by Mr. Chang with the BOE included this Summary Statement:

A majority of District of Columbia voters approved Initiative 77 on June 19, 2018. Initiative 77 gradually increases the minimum wage for tipped employees from the current rate (\$3.89/ hour), to the same minimum wage as non-tipped employees by 2026. In October 2018, the Council of the District of Columbia enacted a law to repeal Initiative 77. This referendum concerns whether that law should be approved (repealing Initiative 77) or rejected (upholding Initiative 77).

12. The Notice of Referendum filed by Mr. Chang with the BOE included this text of the measure: “Shall the registered voters of the District of Columbia approve or reject section 2 of D.C. Act 22-489?” Section 2 of D.C. Act 22-489 states, “The Initiative No. 77 -- Minimum Wage Amendment Act of 2018, effective October 11, 2018 (D.C. Law 22-163; 65 DCR 8513), is repealed.”

13. Initiative No. 77 -- Minimum Wage Amendment Act of 2018, required that on July 1, 2018, the minimum wage required to be paid by any employer in the District of Columbia to any employee who receives gratuities shall be not less than \$4.50 an hour, provided, that the employee actually receives gratuities in an amount at least equal to the difference between the hourly wage paid and the minimum wage otherwise required, which would raise the “tip minimum wage” by approximately 15% on that date, from \$3.89 an hour.

14. Initiative No. 77 -- Minimum Wage Amendment Act of 2018, required that on July 1, 2019, the “tip minimum wage” would increase by 33%, from \$4.50 to \$6.00.

15. Initiative No. 77 -- Minimum Wage Amendment Act of 2018, required that on July 1, 2020, the “tip minimum wage” would increase by 25%, from \$6.00 to \$7.50.

16. Initiative No. 77 -- Minimum Wage Amendment Act of 2018, required that the “tip minimum wage” continue from July 1, 2020 to increase by over double-digit percentages, until it doubled to \$15.00 in only five years.

17. Under Initiative No. 77 -- Minimum Wage Amendment Act of 2018, the “tip minimum wage” would more than triple in seven years.

18. When holding a public hearing regarding a Notice of Referendum, applicable regulations state, “The General Counsel shall provide notice in the D.C. Register of the measure's receipt and the Board's intent to review the measure at a public hearing to determine whether it presents a proper subject for initiative or referendum, whichever is applicable (“Notice of Public Hearing: Receipt and Intent to Review”).” D.C. Code Mun. Regs. tit. 3 § 1000.4.

19. No notice of the public hearing appeared in the D.C Register until the issue published on November 9, 2018, the date of the hearing. A copy of the notice in the D.C. Register is attached hereto as Exhibit B.

20. The notice in the D.C. Register requires comments to be submitted by November 7, 2018, two days before the date of the publication of the Register containing that notice.

21. Previously, when holding a public hearing for purpose of formulating and approving a BOE proposed summary statement for use on the ballot, BOE provided notice in the D.C. Register five (5) days before the public hearing. *See* 57 D.C. Reg. 5726 (publishing notice of a July 7, 2010 public hearing in the July 2, 2018 issue of the D.C. Register); 57 D.C. Reg. 6217 (2010) (“The [BOE] at its Board meeting on Wednesday, July 7, 2010 formulated the short title and summary statement of the Proposed Charter Amendment IV.”); *Zukerberg v. D.C. Bd. of Elections & Ethics*, 97 A.3d 1064, 1070 n.41 (D.C. 2014) (discussing same).

22. Prior to BOE’s November 9, 2018 meeting, Paul Cohn, through counsel, filed a letter objecting to the BOE holding a meeting on November 9, 2018 due to lack of proper notice and setting forth information concerning notice. *See* Exhibit C.

23. At the BOE November 9, 2018 hearing, BOE accepted the Notice of Referendum, noted the Referendum was given the number 008, and adopted the following summary statement regarding the Referendum:

A majority of District of Columbia voters approved Initiative 77 on June 19, 2018. Initiative 77 gradually increases the minimum wage for tipped employees from the current rate (\$3.89/hour), to the same minimum wage as non-tipped employees by 2026. In October 2018, the Council of the District of Columbia enacted a law to repeal Initiative 77. Referendum 008, if approved, would preserve Initiative 77 as originally passed and reject the repeal. Vote FOR Referendum 008 to keep Initiative 77 in effect, and reject the repeal. Vote AGAINST Referendum 008 to permit the repeal to become law and repeal Initiative 77.

24. A representative of BOE's office of general counsel distributed copies of that statement at the November 9, 2018 meeting already prepared in typewritten form. *See* Exhibit D. There was no discussion by BOE in a meeting open to the public concerning that exhibit prior to its preparation and distribution at the November 9, 2018 meeting.

25. Immediately following the conclusion of BOE's November 9, 2018 hearing, representatives of BOE posed for pictures with representatives of Woong Chang.

26. "Within five (5) days of formally adopting the summary statement, short title, and legislative text, the Board shall do the following: (a) Notify the proposer of the measure of the adopted language by certified mail; and (b) Submit the adopted language to the D.C. Register for publication." D.C. Code Mun. Regs. tit. 3 § 1001.3.

27. D.C. Code § 1-1001.16(d) states, "After preparation, the Board shall adopt the summary statement, short title, and legislative form at a public meeting and shall within 5 days, notify the proposer of the measure of the exact language. In addition, the Board, within 5 days of adoption, shall submit the summary statement, short title, and legislative form to the District of Columbia Register for publication."

28. On November 15, 2018, a legal notice appeared in the Washington Post setting forth that BOE had adopted at the November 9, 2018 Public Hearing the Referendum's summary statement, short title, and text of measure. *See* Exhibit E. The Notice of Publication did not set

forth a deadline for any opposition to the summary statement or short title and did not state whether or how one could object to such.

29. Within ten (10) days from the date of its publication in the D.C. Register, any registered qualified elector who objects to the adopted language formulated by the Board may petition the Superior Court of the District of Columbia for review. If no review in the Superior Court is sought, the adopted language shall be considered to be certified at the expiration of the ten (10) day period for review. D.C. Code Mun. Regs. tit. 3 § 1001.4.

30. On November 23, 2018, BOE published a Notice in the D.C. Register setting forth that it had adopted at the November 9, 2018 Public Hearing the Referendum's summary statement, short title, and text of measure. *See* Exhibit F. The Notice did not set forth a deadline for any opposition to the summary statement or short title and did not specify how one could object.

31. D.C. Code § 1-1001.16(e)(1)(B) states, "If any registered qualified elector of the District of Columbia objects to the summary statement, short title, or legislative form of the referendum measure formulated by the Board pursuant to subsection (c) of this section, that person may seek review in the Superior Court of the District of Columbia within 10 calendar days from the date the Board publishes the summary statement, short title, and legislative form in at least one newspaper of general circulation stating objections and requesting appropriate changes. The Superior Court of the District of Columbia shall expedite the consideration of this matter."

COUNT ONE

Petition for Writ of Mandamus Based on Improper Notice of the November 9, 2018 BOE Meeting

32. All previous paragraphs of this Petition in the form of a Complaint are adopted and to be considered as fully set forth herein.

33. Ms. Graham is a registered qualified voter and permitted under the laws and regulations of the District of Columbia to petition this Court for the relief sought.

34. Registered qualified voters may attend, submit information for purpose of consideration or otherwise participate in BOE public hearings.

35. BOE was obligated under applicable Code and regulations to provide notice to the general public in the D.C. Register of the public hearing discussing whether the proposed Notice of Referendum is a proper subject and determining BOE's proposed short title, summary statement and form with reasonable time to make the general public aware of and registered qualified voters to be able to participate in the public hearing.

36. Applicable regulations obligate the BOE to provide such notice: "The General Counsel shall provide notice in the D.C. Register of the measure's receipt and the Board's intent to review the measure at a public hearing to determine whether it presents a proper subject for initiative or referendum, whichever is applicable ("Notice of Public Hearing: Receipt and Intent to Review")." D.C. Code Mun. Regs. tit. 3 § 1000.4.

37. Section 2-553(b) of the D.C. Code states, "The District of Columbia Register shall contain the entire text of the following: (1) Every rule, regulation, and document having general applicability and legal effect required to be but not yet published and integrated in the District of Columbia Municipal Regulations as provided in this subchapter; (2) Every notice of public hearing issued by an agency; (3) Every notice of proposed agency rulemaking or repeal

and every other document required to be published under this chapter; and (4) Every act, resolution, and notice of the Council and any other document requested to be published by the Chairman of the Council or his or her designee.”

38. The notice in the D.C. Register regarding the November 9, 2018 public hearing only appeared in the issue of the D.C. Register published on the date of that hearing and stated that comments were due on November 7, 2018, two days prior.

39. Applicable law and regulations state that interested persons may submit statements regarding issues discussed at BOE’s public hearings and request an opportunity to address BOE at such public hearings and are encouraged to do so at least a day in advance of the public hearing.

40. Petitioner Ms. Graham was unaware of the November 9, 2018 BOE public hearing regarding the Referendum until after the hearing took place.

41. Publication of a notice of a public hearing in the D.C. Register is improper and without effect if it does not reasonably notify the general public of the public hearing a reasonable time before the hearing is to occur.

42. BOE’s notification in the D.C. Register on November 9, 2018 of its hearing that day, requiring submission of comments two days earlier, was not reasonable and is without effect.

43. BOE’s November 9, 2018 notification violated its obligations under D.C. Code Mun. Regs. tit. 3 § 1000.4.

44. WHEREFORE, Petitioner petitions the Court for a writ of mandamus requiring BOE to provide proper notice of a public hearing to consider whether the Referendum is of a proper subject and to consider adoption of the following: (a) An abbreviated and impartial

summary statement not exceeding one hundred (100) words in length expressing the chief purpose of the proposed measure; (b) A short title for the measure not exceeding fifteen (15) words in length by which it will be readily identifiable and distinguishable from other measures which may appear on the ballot; and (c) The proper legislative form of the initiative or referendum measure, where applicable, similar to the form of an act that has completed the course of the legislative process within the District of Columbia government before transmittal to Congress, with such notice appearing in the D.C. Register at least five days prior to the public hearing. Petitioner further requests that this Court's remedy include staying the process of the proposed summary statement, short title and form being considered established for purpose of the Referendum until the conclusion of such a public hearing.

COUNT TWO

Petition for Writ of Mandamus Due to the Referendum Being an Improper Subject

45. All previous paragraphs of this Petition in the form of a Complaint are adopted and to be considered as fully set forth herein.

46. Ms. Graham is a registered qualified voter and permitted under the laws and regulations of the District of Columbia to petition this Court for the relief sought.

47. Section 2 of the Initiative No. 77 -- Minimum Wage Amendment Act of 2018 sought to amend Section 4 of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 to require a higher "tip minimum wage" as of July 1, 2018 and going forward.

48. Specifically, Initiative No. 77 -- Minimum Wage Amendment Act of 2018, required that on ***July 1, 2018***, the minimum wage required to be paid by any employer in the District of Columbia to any employee who receives gratuities shall be not less than \$4.50 an hour, provided, that the employee actually receives gratuities in an amount at least equal to the

difference between the hourly wage paid and the minimum wage otherwise required, which would now raise the “tip minimum wage” *as of that date*, from \$3.89 an hour.

49. Referendum 008 seeks reversal of the Council’s repeal of section 2 of Initiative 77 -- Minimum Wage Amendment Act of 2018, which would require by its terms retroactive application of the tip minimum wage for a period of over eight (8) months over which wages have already been paid.

50. Section 1-1001.16(b)(1) of the D.C. Code states,

Upon receipt of each proposed initiative or referendum measure, the Board shall refuse to accept the measure if the Board finds that it is not a proper subject of initiative or referendum, whichever is applicable, under the terms of title IV of the District of Columbia Home Rule Act, or upon any of the following grounds: (A) The verified statement of contributions has not been filed pursuant to §§ 1-1163.07 and 1-1163.09; (B) The petition is not in the proper form established in subsection (a) of this section; (C) The measure authorizes, or would have the effect of authorizing, discrimination prohibited under Chapter 14 of Title 2; or (D) The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to § 1-204.46.

51. Section 1-1001.16(b)(1)(d) concerns whether the measure would negate or limit an act of the Council concerning the local budget, enacted under Section 1-204.46.

52. D.C. Code § 1-204.101(b) permits use of the referendum process to suspend acts of the Council, except for, *inter alia*, “acts appropriating funds for the general operation budget.”

53. The Court of Appeals has interpreted that basic limitation very broadly, holding that it extends to the full measure of the Council’s role in the District’s budget process, and explained that the word “appropriations,” when used in connection with the functions of the Mayor and the Council in the District’s budget process, refers to the discretionary process by which revenues are identified and allocated among competing programs and activities. *See Dorsey v. District of Columbia Bd. of Elections & Ethics*, 648 A.2d 675, 677 (D.C. 1994) (interpreting a similar Code provision concerning the limitation on initiatives). Congress and the

Council ensured that matters relating to the local budget process, including the identification of revenues and expenses, would remain within the control of the Mayor and Council. *See id.*

54. The Court of Appeals has held that even a “modest” effect on matters concerning the budget would violate the statutory limitation on the subject of referendums and initiatives. *See id.*

55. Under Section 32-1306(a)(1) of the D.C. Code, “The Mayor **shall** enforce and administer the provisions of . . . the Minimum Wage Revision Act, including by conducting sua sponte and complaint-initiated investigations into whether violations have occurred, holding hearings, and instituting actions for penalties,” and section (2) permits the Attorney General, acting in the public interest to bring a civil action in a court of competent jurisdiction against an employer violating the Minimum Wage Revision Act and enables recovery of attorneys’ fees and statutory and administrative penalties. (emphasis added)

56. Referendum 008 is not a proper subject of a referendum under Section 1-1001.16(b)(1)(d) of the D.C. Code because it would negate and/or limit the Council’s acts appropriating funds for the general operation budget, including income received, expenditures required for enforcement of Initiative 77, and the identification of revenues and their allocation, including immediate and prospective effect through the retroactive application of its terms.

57. Upon information and belief, BOE and the Attorney General did not consider the effect of the retroactive application necessary by the Referendum in opining that it was a proper subject, relying instead on earlier consideration of the appropriateness of Initiative 77, which was not challenged, and which did not include retroactive application at the time considered.

WHEREFORE, Petitioner petitions the Court for a writ of mandamus declaring that Referendum 008 is not a proper subject of a referendum under Section 1-1001.16(b)(1) of the D.C. Code.

COUNT THREE

Petition for Writ of Mandamus Concerning the Improper and Misleading Language of BOE's Proposed Summary Statement

58. All previous paragraphs of this Petition in the form of a Complaint are adopted and to be considered as fully set forth herein.

59. Ms. Graham is a registered qualified voter and permitted under the laws and regulations of the District of Columbia to petition this Court for the relief sought.

60. D.C. Code Mun. Regs. tit. 3 § 1001.1 requires that,

Within twenty (20) calendar days of the date on which the Board accepts the initiative or referendum measure, the Board shall prepare and formally adopt the following at a public meeting: (a) An abbreviated and impartial summary statement not exceeding one hundred (100) words in length expressing the chief purpose of the proposed measure; (b) A short title for the measure not exceeding fifteen (15) words in length by which it will be readily identifiable and distinguishable from other measures which may appear on the ballot; and (c) The proper legislative form of the initiative or referendum measure, where applicable, similar to the form of an act that has completed the course of the legislative process within the District of Columbia government before transmittal to Congress.

61. Through the summary statement, BOE generally must provide an impartial presentation of the relevant information to readers not necessarily schooled in the subtleties of the District of Columbia legislative process. *See, e.g., Atkinson v. D.C. Bd. of Elections & Ethics*, 597 A.2d 863, 868 (D.C. 1991).

62. Prior to BOE's November 9, 2018 meeting, the Attorney General submitted a letter objecting to Woong Chang's proposed summary statement due to its confusing nature. *See* Exhibit G.

63. BOE's proposed summary statement is likely to confuse voters and does not provide an impartial presentation of the relevant information to readers not necessarily schooled in the subtleties of the District of Columbia legislative process.

64. The Summary Statement adopted by BOE at its November 9, 2018 meeting states "Initiative 77 gradually increases the minimum for tipped employees from the current rate . . . to the same minimum wage as non-tipped employees." This language is inherently misleading as it suggests tipped employees are not guaranteed the full minimum wage guaranteed to non-tipped employees, contrary to current law, which guarantees the full minimum wage to both tipped and non-tipped employees. D.C. Code § 32-1003.

65. Additionally, the terms in BOE's proposed summary statement that "Initiative 77 gradually increases the minimum wage for tipped employees from the current rate (\$3.89/hour), to the same minimum wage as non-tipped employees by 2026" is likely to confuse voters and is not impartial because the increase in the "tip minimum wage" is not gradual. It nearly triples in a short period of time.

66. The Court of Appeals relies upon dictionary definitions when finding the ordinary meaning of terms. *See, e.g., 1618 Twenty-First St. Tenants' Ass'n, Inc. v. The Phillips Collection*, 829 A.2d 201, 203 (D.C. 2003).

67. The term "gradual" is defined by Webster's dictionary as including "moving, changing, or developing by fine or often imperceptible degrees." Dictionary.com defines the term "gradual" relevantly as "taking place, changing, moving, etc., by small degrees or little by little." Cambridge Dictionary defines it as "changing or developing slowly or by small degrees." MacMillian Dictionary defines it as "gradual processes and changes happen slowly and by small amounts." Moreover, there are ample available neutral words, such as

“incremental”, which describe a phased-in increase without judgment as to the speed of the ultimate increase.

68. Further, the terms in BOE’s proposed summary statement that, “Referendum 008, if approved, would preserve Initiative 77 as originally passed and reject the repeal” is likely to confuse voters and is not impartial because only a section of Initiative 77 is the subject of the Referendum and was repealed.

69. Petitioner sets forth the following as a proper summary statement:

All employees are guaranteed minimum wage, but under current law, tipped employees may be paid a lower hourly wage provided they receive, in paid wages plus tips, the minimum hourly wage. Initiative 77, approved by voters on June 19, 2018, incrementally increases the tipped employee paid wage to the full minimum wage by 2026. In October 2018, Initiative 77 was repealed in part. Referendum 008, if approved, would make Initiative 77 law and reject the repeal. Vote FOR Referendum 008 to make Initiative 77 law. Vote AGAINST Referendum 008 to permit the repeal to become law.

WHEREFORE, should the Court deny Petitioner’s requests for this Court to enter a writ of mandamus under Counts One and Two, Petitioner petitions the Court for a writ of mandamus requiring BOE hold a public hearing concerning, and BOE’s adoption of, clear, non-misleading and impartial language for the Summary Statement and then to proceed with the Referendum as required by Section 1-1001.16 of the D.C. Code and applicable regulations. Petitioner further seeks this Court’s remedy to stay the process of the currently proposed summary statement, short title and form being considered established for purpose of the Referendum and then proceeding as required by Section 1-1001.16 of the D.C. Code and applicable regulations.

COUNT FOUR

Petition for Writ of Mandamus Based on Improper Notice of the Summary Statement, Short Title and Form

70. All previous paragraphs of this Petition in the form of a Complaint are adopted and to be considered as fully set forth herein.

71. Ms. Graham is a registered qualified voter and permitted under the laws and regulations of the District of Columbia to petition this Court for the relief sought.

72. D.C. Code § 1-1001.16(d) states, “After preparation, the Board shall adopt the summary statement, short title, and legislative form at a public meeting and shall within 5 days, notify the proposer of the measure of the exact language. In addition, the Board, within 5 days of adoption, shall submit the summary statement, short title, and legislative form to the District of Columbia Register for publication.”

73. The notice of the BOE’s proposed short title, summary statement and form under D.C. Code Mun. Regs. tit. 3 § 1001.4 and D.C. Code § 1-1001.16(e)(1)(B), must alert the general public that a registered qualified voter may object to the short title, summary statement and/or form by filing an action in the Superior Court in the District of Columbia within ten days of such publication.

74. It has been determined by the Court of Appeals that agencies do not provide proper notice to persons that are afforded an opportunity to comment or object under law or regulation if the general public does not know where or how to submit their objections or comments. *See Junghans v. Dep’t of Human Res.*, 289 A.2d 17, 23 (D.C. 1972).

75. The November 15, 2018 newspaper notice, to the extent relevant, and the November 23, 2018 D.C. Register notice of BOE’s proposed short title, summary statement and form do not alert the general public how to object, where to object, or the deadline for doing so.

76. BOE violated its obligation to alert the general public that a registered qualified voter may object to the short title, summary statement and/or form by filing an action in the Superior Court in the District of Columbia within ten days of such publication.

WHEREFORE, should the Court deny Petitioner's requests for a writ of mandamus under Counts One, Two and Three, Petitioner petitions the Court for a writ of mandamus requiring BOE to provide proper notice of its proposed short title, summary statement and form that includes inclusion of the following or similar statement: "Any registered qualified elector who objects to the adopted language formulated by the Board may petition the Superior Court of the District of Columbia for review within 10 (ten) days of this notice." Petitioner further seeks for this Court's remedy to stay the process of the proposed summary statement, short title and form being considered established for purpose of the Referendum until the notice of the BOE's proposed language is made with inclusion of how, where and when an objection may be made and then as required by Section 1-1001.16 of the D.C. Code and applicable regulations.

COUNT FIVE

Petition for Writ of Mandamus Based on the Referendum's Explicit and Obligatory Retroactive Application of the "Tip Minimum Wage"

77. All previous paragraphs of this Petition in the form of a Complaint are adopted and to be considered as fully set forth herein.

78. Ms. Graham is a registered qualified voter and permitted under the laws and regulations of the District of Columbia to petition this Court for the relief sought.

79. Referendum 008 seeks to overturn the repeal of section 2 of Initiative 77 -- Minimum Wage Amendment Act of 2018.

80. Initiative No. 77 -- Minimum Wage Amendment Act of 2018, required that on *July 1, 2018*, the minimum wage required to be paid by any employer in the District of

Columbia to any employee who receives gratuities shall be not less than \$4.50 an hour, provided, that the employee actually receives gratuities in an amount at least equal to the difference between the hourly wage paid and the minimum wage otherwise required, which would now raise the “tip minimum wage” as of that date, from \$3.89 an hour.

81. When considered by voters in June 2018, Initiative No. 77 -- Minimum Wage Amendment Act of 2018 included no potential retroactive application.

82. In fact, Initiative No. 77 -- Minimum Wage Amendment Act of 2018 is silent on the topic of retroactive application.

83. If Referendum 008 is successful and the effective reversal of the Council’s repeal of section 2 of Initiative 77 -- Minimum Wage Amendment Act of 2018 is effectuated, the terms of Initiative 77-- Minimum Wage Amendment Act of 2018 require retroactive application of the tip minimum wage for a period of over eight (8) months over which wages have already been paid.

84. The Court of Appeals has held that a court should limit retroactive application of a new rule that would result in substantial disruption of settled transactions and/or injustice to a party because of reliance on the continued validity of the prior legal rule -- especially one of long standing. *See, e.g., French v. D.C. Bd. of Zoning Adjustment*, 658 A.2d 1023, 1031 (D.C. 1995). That Court has held that retroactive application should be limited where detrimental reliance on the prior rule occurred. *See, e.g., Davis v. Moore*, 772 A.2d 204, 224 (D.C. 2001).

85. If Referendum 008 is successful without an exception prohibiting retroactive application, the result would be a substantial disruption of all wage payments since July 1, 2018 to tipped employees who were paid less than a \$4.50 per hour and, likely, thousands of lawsuits.

Further, the District's employers who paid a lower, but then-appropriate tipped wage would have detrimentally relied upon the prior rule.

WHEREFORE, Petitioner petitions the Court for a writ of mandamus requiring BOE to eliminate potential retroactive application of Initiative 77 if Referendum 008 is successful and to so state in the Summary Statement and the form of the referendum in the procedure required by Section 1-1001.16 of the D.C. Code and applicable regulations. Petitioner further requests that this Court's remedy include staying the process of the proposed summary statement, short title and form being considered established for purpose of the Referendum until the conclusion of a public hearing and as required by Section 1-1001.16 of the D.C. Code and applicable regulations.

COUNT SIX

Petition for Writ of Mandamus Based on BOE's Violation of the Open Meetings Act

86. All previous paragraphs of this Petition in the form of a Complaint are adopted and to be considered as fully set forth herein.

87. Ms. Graham is a registered qualified voter and permitted under the laws and regulations of the District of Columbia to petition this Court for the relief sought.

88. The BOE is subject to the open meetings provisions of § 1-207.42 (a), the Sunshine Act, which states: "All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the Council of the District of Columbia, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation, or other official action shall be effective unless taken, made, or enacted at such meeting."

89. Regarding the Open Meetings Act of 2010, the Committee Report stated, the Open Meetings Act "broaden[ed] current law," the Sunshine Act, by defining the meetings that

are open to the public to include “any gathering of a quorum of the members of a public body where the members consider, conduct, or advise on public business.” D.C. Code §§ 2-571-2-580.

90. “[N]ot only would this include any meeting where official action is taken,” the Committee Report stated, it “would also include any meetings in preparation for official action or where official action is being discussed.” *Kane v. District of Columbia*, 180 A.3d 1073, 1080-81 (D.C. 2018) (quoting D.C. Council, Report on Bill 18-716, the “Open Meetings Act of 2010,” at 3 (December 2, 2010)).

91. BOE’s proposed summary statement was adopted in violation of the Open Meetings Act as BOE did not publicly consider the alterations to the proposed summary statement formed by Woong Chang in his Notice of Referendum and BOE’s proposed summary statement, which differed in form, or publicly undertake that consideration and/or analysis. *See* D.C. Code § 2-579.

92. As BOE formed its proposed summary statement in violation of its obligations under the Open Meeting Act and applicable D.C. Code provisions and regulations, the proposed summary statement was not properly formed and is of no effect.

WHEREFORE, Petitioner petitions the Court for a writ of mandamus requiring BOE to hold a public hearing to consider whether the Referendum is of a proper subject and to consider adoption of the following: (a) An abbreviated and impartial summary statement not exceeding one hundred (100) words in length expressing the chief purpose of the proposed measure; (b) A short title for the measure not exceeding fifteen (15) words in length by which it will be readily identifiable and distinguishable from other measures which may appear on the ballot; and (c) The proper legislative form of the initiative or referendum measure, where applicable, similar to the form of an act that has completed the course of the legislative process within the

District of Columbia government before transmittal to Congress, with all evaluation, consideration and revision of the original language present in the Notice of Referendum on the record and as required by the Open Meetings Act. Petitioner further requests that this Court's remedy include staying the process of the proposed summary statement, short title and form being considered established for purpose of the Referendum until the conclusion of such a public hearing and as required by Section 1-1001.16 of the D.C. Code and applicable regulations.

DATE: November 26, 2018

Respectfully Submitted,

THE VERITAS LAW FIRM

Andrew J. Kline (D.C. Bar #358547)
Christopher L. LaFon (D.C. Bar #483740)
1225 19th Street NW, Suite 320
Washington, DC 20036
(202) 686-7600
Counsel for Petitioner Valerie Graham